IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6934 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRISHBHAI C SHAH

Versus

STATE OF GUJARAT

Appearance:

MR SANDIP C SHAH for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/05/2000

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioner has challenged the order of the Gujarat Revenue Tribunal in revision application No. TEN.BA. No. 1235/84 under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act").

2. In view of the course that this Court proposes to

adopt, it is not necessary to set out all the facts in detail. The controversy before the authorities under the Act and the Tribunal was whether the petitioners were residing within the distance of 8 kms. from the land which they purchased in village Sargasan in Gandhinagar Taluka. The land was purchased as per the registered sale deed dated 2.5.1981. On 11.10.1982 the Mamlatdar issued show cause notice under Section 84C of the Act on the ground that the purchasers were not agriculturists and, therefore, there was violation of Section 63 of the Act. The case of the purchasers was that they had another parcel of agricultural land in village Charada in Gandhinagar taluka and that, therefore, they were agriculturists and there was no violation of the provisions of Section 63 of the Act. The authorities did accept the petitioners' case that they had another agricultural land at village Charada but the orders were passed against the petitioners on the ground that the land purchased on 2.5.1981 was not within a distance of 8 kms. from the place of their residence. The authorities also did not accept the case of the petitioners that they were residing at Gandhinagar.

3. The Tribunal, however, did not go into the aforesaid aspect about the petitioners' residence. The Tribunal proceeded on the footing that the land purchased under the impugned transaction was required to be within 8 kms. from their original agricultural holding and, therefore, the Tribunal did not decide the question whether the land in Sargasan was within 8 kms. from their residence.

4. The relevant provisions of the Act read as under:-

"2(2) "Agriculturist" means a person who cultivates land personally.

2(6) "to cultivate personally" means to cultivate land on one's own account -

(i) by one's own labour, or
(ii) by the labour of any member of one's family, or
(iii) under the personal supervision of oneself any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share,

being land, the entire area of which -

(a) is situate within the limits of a single village, or

(b) is so situated that no price of land is separated from another by a distance of more than five miles, or

(c) forms one compact block;

Explanation I - ... ...

Explanation II - ... ...

Explanation III - For the purpose of this clause, the expression "personal supervision" means giving from time to time instructions or directions to the labourers or servants in regard to the cultivation of land, and exercising control in respect thereof, during the entire process of cultivation, or according to the circumstances, during a substantial part of the entire process of cultivation by the person concerned residing during major part of the agricultural season in the village in which the land is situated or at a place in another village situated at a distance not exceeding fifteen kilometers from the land :

Provided that, for the purpose of this Explanation, it shall not be necessary for a person to so reside in such village or place if a certificate is granted by the Collector to such person that owing to the smallness of his holding, limited income from agriculture or any other reason as may be prescribed, it is not possible for him to so reside in such village or place, without detriment to his means of livelihood, and such certificate is in force.

63. Transfers to non-agriculturists barred.-(1) Save as provided in this Act,-

(a) no sale .. .. gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, or

(c) no agreement made by an instrument in writing for the sale, gift, exchange,

lease or mortgage of any land or interest therein.

shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer:

Provided that the Collector or an officer authorised by the State government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage or for such agreement, on such conditions as may be prescribed :

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees."

5. An analysis of the aforesaid provisions particularly the provisions of Section 2(6) of the Act shows that when the land is being cultivated under the personal supervision of the owner or his family member either the two parcels of land must be within a distance of five miles (8 kms.) from each other or eachof the parcels of land must be within a distance not exceeding 15 kms. from the village in which the owner resides and gives from time to time instructions or directions to the labourers or servants in regard to the cultivation of land, and exercises control in respect thereof, during the entire process of cultivation or during a substantial part of the entire process of cultivation and the residence of such person is required to be in such village during major part of the agricultural season.

6. In other words, the Tribunal misdirected itself in not considering that the two requirements were alternative and not cumulative. Hence, the Tribunal was required to consider whether the land in village Sargasan was within 8 kms. from the place of the petitioners' residence. Since this is a factual aspect, the matter will have to be remanded to the Tribunal.

7. Mr Shah has also raised an alternative contention that in view of the amendment to the aforesaid provisions in 1995, the restriction of 8 kms. would not now be

applicable. The Court does not propose to go into this question at this stage. It will be open to the petitioners to raise this contention before the Tribunal. The Court does not express any view either way.

8. In view of the aforesaid discussion, the petition is partly allowed. The judgment and order dated 27.8.1989 is hereby set aside. The Tribunal shall hear and decide the matter afresh in light of the observations made in this judgment and permit the petitioners to raise all the contentions available to them under the law as well as on facts. In view of the fact that the judgment of the Tribunal is set aside, status quo as regards the land in question which was prevailing during pendency of the revision application, shall continue till final disposal of the revision application.

Rule is made absolute to the aforesaid extent only.

May 5, 2000 (M.S. Shah, J.)
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